



June 25, 2020

REQUEST FOR PUBLICATION OF EMERGENCY RULE

MEMORANDUM FOR THE EXECUTIVE COMMISSIONER

THROUGH: Karen Ray
Chief Counsel

Victoria Ford
Chief Policy and Regulatory Officer

David Kostroun
Deputy Executive Commissioner for Regulatory Services

FROM: Jean Shaw
Associate Commissioner for Child Care Regulation

SUBJECT: HHSC-20-0047 – Ongoing Requirements for Certain Day Care
Operations in Response to COVID-19 Emergency Rule

Purpose

To request your approval, as soon as possible, to adopt a new emergency rule in Texas Administrative Code, Title 26, Part 1, Chapter 745, Licensing, Subchapter X, Emergency Rules. Immediately upon filing this new emergency rule with the *Texas Register*, it will become effective.

Background/Summary

The emergency rulemaking is to support: (1) the Governor's continuing March 13, 2020 proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas; and (2) the minimum standard health protocols that the Governor's Strike Force to Open Texas created to help protect the health and safety of employees and children in child care centers during COVID-19. In the Governor's proclamation, he authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this

Emergency Rule with Ongoing Requirements for Certain Day Care Operations in
Response to COVID-19.

The purpose of the new emergency rule is to describe the ongoing requirements for certain day care operations in response to COVID-19.

Discussion

The Texas Health and Human Services Commission finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of new section 745.10003. To protect children in day care and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to: (1) require compliance with CDC requirements for child care programs; (2) require caregiver training related to COVID-19; (3) require screening of persons and children entering an operation and explicitly deny entry to persons or children that meet a screening criteria; (4) require a pick-up and drop-off plan for children; (5) require stricter standards when changing diapers and when clothes get contaminated; (6) adjust the HVAC system; (7) limit the use of cloth toys; (8) require the posting of handwashing posters; (9) limit the use of food preparation sinks; (10) not allow the serving of family style meals; and (11) clarify that a more restrictive rule or executive order controls.

If approved, the new emergency rule will become effective immediately upon filing with the *Texas Register*. Pursuant to Section 2001.034 of the Texas Government Code, the emergency rule may remain effective for up to 120 days, and one renewal may be filed prior to the 120-day expiration date to extend the emergency rule's effectiveness for an additional 60 days.

Karen Ray, HHSC Chief Counsel, has reviewed the new emergency rule and determined that the emergency rule meets all legal requirements for publication.

Recommendation

I recommend that you approve the emergency rule for adoption as soon as possible. The preamble and emergency rule that will be submitted to the *Texas Register* are attached for your review.

<u>Executive Commissioner's Decision</u>			
Approved	<input checked="" type="checkbox"/>	Date	_____
Not Approved	_____	Date	_____
Modify	_____	Schedule Briefing	_____
Comments/Acknowledgment:			
			

Attachments: Emergency Rule Adoption Preamble
 Emergency Rule Text

cc: Vacant, Chief of Staff

TITLE 26 HEALTH AND HUMAN SERVICES
PART 1 HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 745 LICENSING
SUBCHAPTER X EMERGENCY RULES

EMERGENCY RULE ADOPTION PREAMBLE

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 745 Licensing, new §745.10003, concerning an emergency rule with ongoing requirements for certain day care operations in response to COVID-19. As authorized by Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed once for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support: (1) the Governor's continuing March 13, 2020 proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas; and (2) the minimum standard health protocols that the Governor's Strike Force to Open Texas created to help protect the health and safety of employees and children in child care centers during COVID-19. In the Governor's proclamation, he authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Emergency Rule with Ongoing Requirements for Certain Day Care Operations in Response to COVID-19.

To protect children in day care and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to: (1) require compliance with CDC requirements for child care programs; (2) require caregiver training related to COVID-19; (3) require screening of persons and children entering an operation and explicitly deny entry to persons or children that meet a screening criteria; (4) require a pick-up and drop-off plan for children; (5) require stricter standards when changing diapers and when clothes get contaminated; (6) adjust the HVAC system; (7) limit the use of cloth toys; (8) require the posting of handwashing posters; (9) limit the use of food preparation sinks; (10) not allow the serving of family style meals; and (11) clarify that a more restrictive rule or executive order controls.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Human Resources Code §42.001 and §42.042. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Human Resources Code §42.042, authorizes the Executive Commissioner of HHSC to adopt rules to carry out the provisions of Chapter 42 of the Texas Human Resources Code, concerning Regulation of Certain Facilities, Homes, and Agencies that Provide Child-Care Services. Texas Human Resources Code §42.001, states that the purpose of Chapter 42 is to protect the health, safety, and well-being of children of the state who reside in child-care facilities by establishing minimum standards for the children's safety and protection and by regulating the facilities through the licensing program.

The new section implements Texas Government Code §531.0055 and Texas Human Resources Code §42.001 and §42.042.

The agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

ADDITIONAL INFORMATION

For further information, please call: (512) 438-5559.

TITLE 26 HEALTH AND HUMAN SERVICES
PART 1 HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 745 LICENSING
SUBCHAPTER X EMERGENCY RULES
DIVISION 1 RULES FOR CERTAIN DAY CARE OPERATIONS IN RESPONSE TO COVID-19

§745.10003. Emergency Rule with Ongoing Requirements for Certain Day Care Operations in Response to COVID-19.

(a) This section applies to the following operations:

- (1) School-age programs;
- (2) Before and after-school programs;
- (3) Child-care centers;
- (4) Licensed child-care homes; and
- (5) Registered child-care homes.

(b) An operation must comply with the current CDC Guidance for Child Care Programs that Remain Open located at: www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-childcare.html.

(c) Regarding caregivers, an operation:

(1) Must ensure that all caregivers take the Special Considerations for Infection Control during COVID-19 training through the Texas A&M AgriLife Extension; and

(2) Encourage caregivers and staff 65 years of age or older, or others who might be at higher risk for severe illness from COVID-19, to talk to their healthcare provider to assess their risk and determine if they should continue to be present at the operation.

(d) An operation must screen all persons and children according to CDC guidance before allowing entry into the operation, including checking the temperature of each person and child upon arrival at the operation each day and denying entry to any person who meets one of the following criteria:

(1) Fever or signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat;

(2) Close contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, someone who is under investigation for COVID-19, or someone who is ill with a respiratory illness; or

(3) International travel within the last 14 days to countries with ongoing community transmission. For updated information on affected countries visit: <https://www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notices.html>.

(e) An operation must not deny entry to persons performing official duties, unless the individual meets a screening criteria in subsection (d). The screening required by this section does not apply to emergency services personnel entering the operation in an emergency situation.

(f) Regarding the pick-up and drop-off of children, an operation:

(1) Must limit the direct contact between parents and caregivers to the extent possible considering the age of the child; and

(2) Must complete the pick-up and drop-off of children outside of the operation, unless the operation determines that there is a legitimate need for the parent to enter. Should the parent have a legitimate need to enter the operation, the parent must be screened by the operation as provided in subsection (d).

(g) Regarding the spread of germs:

(1) In addition to following the current minimum standards related to diapering:

(A) A caregiver must wash an infant's or toddler's hands and the caregiver's hands before changing a diaper;

(B) A caregiver must wear gloves when changing a diaper; and

(C) An operation must post diaper changing procedures in all diaper changing areas.

(2) Children and caregivers must have multiple changes of clothing available at an operation because any secretions on a child's clothes or bib or a caregiver's clothes will mean that the clothes or bib must be changed; and

(A) Contaminated clothes or bibs must be placed in a sealed plastic bag to be sent home with the child or caregiver or washed in a washing machine;

(B) The child's hands and the caregiver's hands must be washed after changing clothes; and

(C) A child must not be allowed to wear another child's clothing; and

(3) An operation:

(A) Must adjust the HVAC system, if possible, to allow fresh air to enter the operation;

(B) Must not use machine washable cloth toys, or the toys must only be used by one child and then laundered before use by another child; and

(C) Must place posters describing handwashing steps near sinks used for handwashing. Developmentally appropriate posters in multiple languages are available from the CDC.

(h) Regarding food preparation, an operation:

(1) When using a sink for food preparation, may not use that sink for any other purpose; and

(2) Must not serve family style meals; each child must be provided individual meals and snacks.

(i) If this emergency rule is more restrictive than any minimum standard relating to the operations addressed by this rule, this emergency rule will prevail so long as this emergency rule is in effect.

(j) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this emergency rule or any minimum standard relating to the operations addressed in this emergency rule, the operations must comply with the executive order or other direction.